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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/923,552	08/07/2001	Linda J. McMeekin	JBP-562	2880
27777	7590	11/05/2003	EXAMINER	
PHILIP S. JOHNSON JOHNSON & JOHNSON ONE JOHNSON & JOHNSON PLAZA NEW BRUNSWICK, NJ 08933-7003			JOYNES, ROBERT M	
			ART UNIT	PAPER NUMBER
			1615	

DATE MAILED: 11/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/923,552	Applicant(s) MCMEEKIN ET AL.	
	Examiner Robert M. Joynes	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 09 October 2003.
- 2a) ☐ This action is FINAL.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1, 3-5, 7 and 9-15 is/are pending in the application.
- 4a) Of the above claim(s) 2, 6 and 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-5, 7, 9-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                             | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

### DETAILED ACTION

Receipt is acknowledged of applicants' Amendment and Request for Continued Examination filed on October 9, 2003.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 3-5, 7, 9-11 and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over RD 382014 A (February 1996) in combination with Pung et al. (WO 9925318). The RD reference teaches a textured wipe for treating the skin wherein a pattern of texture is applied to a substrate that is relatively non-textured by a hot-melt or plastic printing technique (See abstract provided). Polyolefins, polyesters and ethylene vinyl acetate are used to form the textured pattern. Area coverage, patterns, colors and thickness of the texture can be widely modified. The coverage area ranges from 1% to 100% of the substrate area. The thickness ranges from a few millimeters to 50

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millimeters. The texture resins also contain active ingredients or controlled solubility active agents.

The RD reference further does not expressly teach the type of material that composed the substrate.

Pung teaches a cleansing wipe made from a single-layer, non-woven substrate (Page 2, line 72 – Page 5, line 173). The average basis weight of the substrate is from about 40 to 90 grams per square meter (Page 5, lines 164-173).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to choose a suitable substrate for producing a textured cleansing cloth.

One of ordinary skill in the art would have been motivated to do this to provide a sturdy yet flexible cloth that is suitable for the various parts of the body the cloth could be used for (e.g., the hair, the face, the feet, the torso).

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

The RD reference does not expressly teach the same exact surface area coverage range. The RD reference does not teach the specific shapes of the raised elements on the wipe. The RD reference further does not expressly teach the diameters of the raised texture.

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to change the particular surface area of the substrate that is covered by the texture resin. It also would have been obvious to a person of ordinary

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skill in the art to employ various shapes and diameter sizes. There is no criticality seen in applicants' claimed shapes and diameter sizes.

One of ordinary skill in the art would have been motivated to do this to provide various patterns and shapes, to provide more or less abrasive material to clean the skin as well as to provide for an aesthetic purpose.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over RD382014 A (February 1996) in combination with Pung et al. (WO 9925318) in further combination with Thomas et al. (US 5116563). The teachings of the RD reference and Pung are discussed above. The RD reference does not expressly teach that specific hot-melt technique for producing the raised texture pattern. The RD reference does teach that the Thomas reference discloses the suitable hot-melt techniques. Pung teaches the suitable materials for the substrate.

Thomas teaches one suitable hot-melt technique to be the gravure printing technique (Col. 5, lines 5-33).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to implement various hot-melt techniques for producing the textured pattern for the cleansing wipe comprising various substrates.

One of ordinary skill in the art would have been motivated to do this based on availability and expense of the equipment used for such a technique.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made.

### ***Response to Arguments***

Applicants' arguments filed on February 13, 2003 have been fully considered but are found not persuasive. Applicants argue that the RD reference fails to teach or suggest a dry textured substrate that provides a skin or hair benefit. Further, applicants argue that the prior art fails to teach or suggest the various types of materials that can be used for the substrate, the basis weight of that substrate or the diameter of the raised elements produced on the substrate.

The Examiner would like to point out that the RD reference teaches a dry substrate with raised elements for removal of BM from the skin thereby imparting a skin benefit by removing waste to clean the skin. In addition, the limitation of providing a skin or hair benefit is found in Claim 10, 13 and 15. Applicants' arguments with regard to the skin or hair benefit are not commensurate in scope with all of the instant claims. Therefore, applicants' arguments to the contrary are unpersuasive.

Further, the RD reference teaches that the composition can contain an active agent. Therefore, the RD reference teaches or suggests a wipe with texture on one side that has an active agent included in the composition. The new limitations recited in the instant claims do not impart any distinction over the prior art and therefore are rendered obvious over the prior art. In addition, the Pung reference teaches a cleansing wipe that contains a skin care composition impregnated on the wipe (See Claims 1-7). Therefore, The RD reference alone or in combination with Pung would suggest a texture

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wipe with a skin care composition loaded on the substrate. Again, the new limitations do not distinguish the instant claims over the prior art and are rendered obvious in view of the prior art.

### ***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert M. Joynes whose telephone number is (703) 308-8869. The examiner can normally be reached on Mon.-Thurs. 8:30 - 6:00, alternate Fri. 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K. Page can be reached on (703) 308-2927. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Robert M. Joynes  
Patent Examiner  
Art Unit 1615  
October 31, 2003

THURMAN K. PAGE  
SUPERVISORY PATENT EXAMINER  
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